

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DANA D. SANCHEZ,	)	
	)	No. CV-05-0242-MWL
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

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BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on April 17, 2006. (Ct. Rec. 16, 19). Plaintiff Dana D. Sanchez ("Plaintiff") filed a reply brief on March 17, 2006. (Ct. Rec. 21). Attorney Maureen Rosette represents Plaintiff; Special Assistant United States Attorney Jeffrey H. Baird represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 19) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 16).

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**JURISDICTION**

On February 24, 1997, Plaintiff protectively applied for Supplemental Security Income ("SSI") benefits alleging disability since December 31, 1985, due to brittle diabetes mellitus. (Administrative Record ("AR") 85-86, 91, 274-275).<sup>1</sup> On January 13, 2004, Plaintiff appeared before Administrative Law Judge ("ALJ") Mary B. Reed, at which time testimony was taken from Plaintiff and vocational expert K. Diane Kramer. (AR 506-573). On March 25, 2005, the ALJ issued a decision finding that Plaintiff was not disabled. (AR 274-287). The Appeals Council denied a request for review on June 25, 2005. (AR 266-268). Therefore, the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review pursuant to 42 U.S.C. § 405(g) on August 15, 2005. (Ct. Rec. 1).

As noted by the ALJ, by way of an October 13, 2004 letter, Plaintiff requests a closed period of disability, from July 27, 1994, through September 12, 1998. (AR 275, 312). Plaintiff indicates that her disability ended on September 12, 1998, because she had returned to full-time employment. (AR 275).

**STATEMENT OF FACTS**

The facts have been presented in the administrative hearing transcript, the ALJ's decision, the briefs of both Plaintiff and the Commissioner and will only be summarized here. Plaintiff was 31 years old on the date of the ALJ's decision, has a high school

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<sup>1</sup>An ALJ issued a decision denying her claim for SSI on April 30, 1999. (AR 14-20). However, this Court issued an order on October 17, 2002, remanding the case for additional proceedings. (AR 294-295).

1 education and completed a nine-month course at Interface Computer  
2 School in 1998. (AR 515-517). Plaintiff has past relevant work  
3 as a telemarketer, a restaurant hostess, an agricultural sorter,  
4 and a pharmacy B tech. (AR 517-521).

5 At the administrative hearing held on January 13, 2004,  
6 Plaintiff testified that she suffered from the symptoms of her  
7 diabetes during the relevant time period (July of 1994 to  
8 September of 1998). (AR 523). She stated that her blood sugar  
9 fluctuated from one extreme to the other, anywhere from 40 to 400.  
10 (AR 523). High blood sugar caused her to be irritable and  
11 resulted in the need to frequently use the restroom. (AR 524).  
12 Extremely low blood sugar would result in her passing out. (AR  
13 529). She experienced fatigue and would take a couple of one hour  
14 to one and one-half hour naps per day, every day. (AR 526).  
15 Plaintiff indicated that her energy level was low and she would  
16 only do housework in 20 to 30 minute increments with rest periods  
17 in between. (AR 526-527).

18 Plaintiff testified that, during the relevant period, she  
19 stopped driving because she experienced blurred vision when her  
20 blood sugar was low which caused her to hit curbs with the car.  
21 (AR 531). She stated that her thought process and memory was  
22 better during the relevant time period than it is now, but that  
23 she still had a hard time concentrating during that period of  
24 time. (AR 532-533). During that same time period, Plaintiff did  
25 not report problems with anxiety or depression, nor did she see  
26 any mental health professionals. (AR 534).

27 Plaintiff indicated that she could only walk a couple of  
28 blocks and stand for 20 to 30 minutes at a time, but could sit  
without difficulty. (AR 535). She indicated that, with regard to

1 postural limitations, she could bend at the waist, but the pain in  
2 her knees prevented her from kneeling. (AR 535-536). She stated  
3 that she could, however, climb stairs during that period of time.  
4 (AR 536).

5 Plaintiff testified that she also had growths under her arms  
6 which had affected her daily activities. (AR 538). However, she  
7 stated that when the growths were surgically removed her  
8 activities were not affected, and she eventually outgrew the  
9 problems with the growths. (AR 538-539). In any event, she was  
10 able to maintain work as a bookkeeper, outside of the relevant  
11 time period, even though she was experiencing the underarm growth  
12 problem. (AR 539, 541).

13 Plaintiff indicated that she could not have performed full-  
14 time work during the relevant time period because "[i]t was too  
15 much." (AR 542). When the ALJ questioned her as to what changed  
16 to allow her to return to work in September of 1998, she responded  
17 that she and her husband were broke and her husband threatened to  
18 leave her if she did not find work. (AR 542). She then attended  
19 computer school/training on her own accord and obtained work  
20 thereafter. (AR 542). She attended school from 10:00 a.m. until  
21 4:00 p.m. and completed 15 to 20 hours of lab time as well. (AR  
22 549). Plaintiff reported that her attendance was good and her  
23 grades were A's and B's. (AR 550).

24 At the administrative hearing, the ALJ questioned Plaintiff  
25 about forms filled out for Dr. Hartman that indicated Plaintiff  
26 did not have any severe insulin reactions, changes in vision,  
27 shortness of breath, sores on her feet or numbness. (AR 552-553,  
28 556). Plaintiff testified that she would respond with a "no" to  
these questions so that she would not jeopardize losing her

1 driver's license or having her license suspended. (AR 553, 556).  
2 She stated it was important for her to keep her driver's license  
3 so that she would be able to transport her kids to and from  
4 school.<sup>2</sup> (AR 556).

5 Vocational expert K. Diane Kramer testified on January 13,  
6 2004 (AR 558-570), and medical expert Arthur D. Craig testified at  
7 the administrative hearing held on March 9, 1999 (AR 29-35).

8 **SEQUENTIAL EVALUATION PROCESS**

9 The Social Security Act (the "Act") defines "disability" as  
10 the "inability to engage in any substantial gainful activity by  
11 reason of any medically determinable physical or mental impairment  
12 which can be expected to result in death or which has lasted or  
13 can be expected to last for a continuous period of not less than  
14 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The  
15 Act also provides that a Plaintiff shall be determined to be under  
16 a disability only if his impairments are of such severity that  
17 Plaintiff is not only unable to do his previous work but cannot,  
18 considering Plaintiff's age, education and work experiences,  
19 engage in any other substantial gainful work which exists in the  
20 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
21 Thus, the definition of disability consists of both medical and  
22 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
23 (9<sup>th</sup> Cir. 2001).

24 The Commissioner has established a five-step sequential  
25 evaluation process for determining whether a person is disabled.  
26 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is  
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28 <sup>2</sup>Plaintiff testified that "I know that's wrong to lie to your doctor,  
but I didn't want to have more chaos of, you know, how are we going to get  
the kids here when I'm at work . . . ." (AR 556).

1 engaged in substantial gainful activities. If he is, benefits are  
2 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the  
3 decision maker proceeds to step two, which determines whether  
4 Plaintiff has a medically severe impairment or combination of  
5 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

6 If Plaintiff does not have a severe impairment or combination  
7 of impairments, the disability claim is denied. If the impairment  
8 is severe, the evaluation proceeds to the third step, which  
9 compares Plaintiff's impairment with a number of listed  
10 impairments acknowledged by the Commissioner to be so severe as to  
11 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),  
12 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment  
13 meets or equals one of the listed impairments, Plaintiff is  
14 conclusively presumed to be disabled. If the impairment is not  
15 one conclusively presumed to be disabling, the evaluation proceeds  
16 to the fourth step, which determines whether the impairment  
17 prevents Plaintiff from performing work he has performed in the  
18 past. If Plaintiff is able to perform his previous work, he is  
19 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff  
20 cannot perform this work, the fifth and final step in the process  
21 determines whether Plaintiff is able to perform other work in the  
22 national economy in view of his residual functional capacity and  
23 his age, education and past work experience. 20 C.F.R. §§  
24 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

25 The initial burden of proof rests upon Plaintiff to establish  
26 a *prima facie* case of entitlement to disability benefits.

27 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
28 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is

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1 met once Plaintiff establishes that a physical or mental  
2 impairment prevents him from engaging in his previous occupation.  
3 The burden then shifts to the Commissioner to show (1) that  
4 Plaintiff can perform other substantial gainful activity and (2)  
5 that a "significant number of jobs exist in the national economy"  
6 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498  
7 (9<sup>th</sup> Cir. 1984).

#### 8 STANDARD OF REVIEW

9 Congress has provided a limited scope of judicial review of a  
10 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold  
11 the Commissioner's decision, made through an ALJ, when the  
12 determination is not based on legal error and is supported by  
13 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995  
14 (9<sup>th</sup> Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir.  
15 1999). "The [Commissioner's] determination that a plaintiff is  
16 not disabled will be upheld if the findings of fact are supported  
17 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572  
18 (9<sup>th</sup> Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence  
19 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d  
20 1112, 1119 n.10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
21 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
22 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
23 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
24 evidence as a reasonable mind might accept as adequate to support  
25 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
26 (citations omitted). "[S]uch inferences and conclusions as the  
27 [Commissioner] may reasonably draw from the evidence" will also be  
28 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965).  
On review, the court considers the record as a whole, not just the

1 evidence supporting the decision of the Commissioner. *Weetman v.*  
2 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989) (quoting *Kornock v.*  
3 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

4 It is the role of the trier of fact, not this court, to  
5 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
6 evidence supports more than one rational interpretation, the court  
7 may not substitute its judgment for that of the Commissioner.  
8 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
9 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by  
10 substantial evidence will still be set aside if the proper legal  
11 standards were not applied in weighing the evidence and making the  
12 decision. *Browner v. Secretary of Health and Human Services*, 839  
13 F.2d 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial  
14 evidence to support the administrative findings, or if there is  
15 conflicting evidence that will support a finding of either  
16 disability or nondisability, the finding of the Commissioner is  
17 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir.  
18 1987).

#### 19 ALJ'S FINDINGS

20 The ALJ found at step one that Plaintiff did not engage in  
21 substantial gainful activity during her alleged closed period of  
22 disability. (AR 276). However, the ALJ did note that, following  
23 Plaintiff's closed period, she performed work at substantial  
24 gainful activity levels as a receptionist (semiskilled, sedentary  
25 work). (AR 276).

26 At step two, the ALJ determined that Plaintiff has the severe  
27 impairments of diabetes mellitus, obesity and chondromalacia of  
28 the left knee, but that she does not have an impairment or  
combination of impairments listed in or medically equal to one of



1 the Listings impairments. (AR 279, 285). It was noted that the  
2 record did not reveal the presence of any medically determinable  
3 mental impairment during the time period at issue. (AR 279, 282).

4 The ALJ concluded that, during the relevant period, Plaintiff  
5 retained the residual functional capacity ("RFC") to preform a  
6 limited range of light exertion work or that she had the ability  
7 to occasionally lift or carry 20 pounds, frequently lift or carry  
8 10 pounds, stand and/or walk about six hours in an eight-hour work  
9 day, sit (with normal breaks) for a total of about six hours in an  
10 eight-hour work day, occasionally squat, kneel and climb stairs,  
11 never climb ladders ropes or scaffolds, should avoid hazardous  
12 machinery, needs regular work hours and requires regular meal  
13 breaks. (AR 282-283).

14 At step four of the sequential evaluation process, the ALJ  
15 found that Plaintiff was not able to perform her past relevant  
16 work as an agricultural sorter. (AR 283). However, the ALJ  
17 determined that, within the framework of the Medical-Vocational  
18 Guidelines ("Grids") and based on the vocational expert's  
19 testimony and Plaintiff's RFC, age, education, and work  
20 experience, there were a significant number of jobs in the  
21 national economy which she could perform despite her limitations.  
22 (AR 284-285). Examples of such jobs included work as a routing  
23 clerk, a housekeeping/cleaner, a laboratory sample carrier, a type  
24 copy examiner (document reviewer), an addresser, and a charge  
25 account clerk. (AR 284-285). Accordingly, the ALJ determined at  
26 step five of the sequential evaluation process that Plaintiff was  
27 not disabled within the meaning of the Social Security Act. (AR  
28 284-287).

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**ISSUES**

Plaintiff contends that the Commissioner erred as a matter of law. Specifically, she argues that:

1. The ALJ improperly relied on the testimony of the medical expert, Dr. Craig, over the opinions of Plaintiff's treating physician, Dr. Hartman, to erroneously conclude that Plaintiff had the RFC to perform light exertion level work; and

2. The ALJ erroneously determined that Plaintiff was not credible.

This Court must uphold the Commissioner's determination that Plaintiff is not disabled if the Commissioner applied the proper legal standards and there is substantial evidence in the record as a whole to support the decision.

**DISCUSSION**

**A. RFC Assessment**

Plaintiff contends that the ALJ erred by finding that Plaintiff retained the RFC for a range of light exertional work activities. (Ct. Rec. 17, pp. 14-18). Plaintiff specifically asserts that the ALJ failed to provide specific and legitimate reasons for rejecting the medical opinions of treating physician Jeffrey Hartman, M.D., and incorrectly relied upon the testimony of the medical expert, Dr. Craig. (Ct. Rec. 17, pp. 14-18). Plaintiff argues that the ALJ should have credited Dr. Hartman's opinion that Plaintiff would have problems with her right arm due to her right axillary abscess. (Ct. Rec. 17, p. 17). The Commissioner responds that the ALJ properly evaluated the medical evidence of record. (Ct. Rec. 20, pp. 5-7).

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1       The courts distinguish among the opinions of three types of  
2 physicians: treating physicians, physicians who examine but do  
3 not treat the claimant (examining physicians) and those who  
4 neither examine nor treat the claimant (nonexamining physicians).  
5 *Lester v. Chater*, 81 F.3d 821, 839 (9<sup>th</sup> Cir. 1996). A treating  
6 physician's opinion is given special weight because of his  
7 familiarity with the claimant and her physical condition. *Fair v.*  
8 *Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir. 1989). Thus, more weight is  
9 given to a treating physician than an examining physician.  
10 *Lester*, 81 F.3d at 830. However, the treating physician's opinion  
11 is not "necessarily conclusive as to either a physical condition  
12 or the ultimate issue of disability." *Magallanes v. Bowen*, 881  
13 F.2d 7474, 751 (9<sup>th</sup> Cir. 1989) (citations omitted).

14       The Ninth Circuit has held that "[t]he opinion of a  
15 nonexamining physician cannot by itself constitute substantial  
16 evidence that justifies the rejection of the opinion of either an  
17 examining physician or a treating physician." *Lester*, 81 F.3d at  
18 830. Rather, an ALJ's decision to reject the opinion of a  
19 treating or examining physician, may be *based in part* on the  
20 testimony of a nonexamining medical advisor. *Magallanes*, 881 F.2d  
21 at 751-55; *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9<sup>th</sup> Cir. 1995).  
22 The ALJ must also have other evidence to support the decision such  
23 as laboratory test results, contrary reports from examining  
24 physicians, and testimony from the claimant that was inconsistent  
25 with the physician's opinion. *Magallanes*, 881 F.2d at 751-52;  
26 *Andrews*, 53 F.3d 1042-43. Moreover, an ALJ may reject the  
27 testimony of an examining, but nontreating physician, in favor of  
28 a nonexamining, nontreating physician only when he gives specific,  
legitimate reasons for doing so, and those reasons are supported

1 by substantial record evidence. *Roberts v. Shalala*, 66 F.3d 179,  
2 184 (9<sup>th</sup> Cir. 1995).

3 Consistent with the findings of the medical expert, Dr. Craig  
4 (AR 31-33), the ALJ determined that Plaintiff retained the RFC to  
5 perform light exertion work, but that she could only occasionally  
6 squat, kneel and climb stairs and never climb ladders, ropes or  
7 scaffolds, should avoid hazardous machinery, needs regular work  
8 hours and requires regular meal breaks. (AR 282-283).

9 The ALJ's RFC finding is consistent with not only the medical  
10 expert's opinion, but also with the opinions of state agency  
11 reviewing physicians of record. On June 24, 1997, Drs. Wolfe and  
12 Fuller reviewed the record and concluded that Plaintiff had no  
13 established exertional limitations during the relevant time  
14 period. (AR 203-210). They noted excellent control of  
15 Plaintiff's diabetes over a 10 year period, found no evidence of  
16 early diabetic changes and found Plaintiff unimpaired other than  
17 the preclusion of climbing activity and the need to avoid hazards  
18 such as machinery and heights. (AR 204-205, 207).

19 During the relevant time period, Plaintiff's treating  
20 physician, Dr. Hartman, treated Plaintiff for Diabetes Mellitus  
21 Type I, hypothyroidism-clinically euthyroid, hidradenitis-  
22 suppurativa, neuropathy, retinopathy, obesity, probable  
23 chondromalacia patellae, tobacco abuse and TMJ. (AR 162-170, 213-  
24 218). On October 6, 1994, Dr. Hartman opined that Plaintiff would  
25 be capable of performing light exertion work, but that her  
26 infected axillary node or gland would limit her ability to use her  
27 right arm. (AR 164-165). However, Dr. Hartman indicated that the  
28 infected axillary node or gland would only keep Plaintiff from  
performing at least half-time work in a normal day-to-day work

1 setting for 12 to 26 weeks<sup>3</sup> and that treatment would likely  
2 restore her ability to perform work. (AR 165). At the  
3 administrative hearing, Plaintiff testified that, in fact, when  
4 the growths were removed from her underarms, her activities were  
5 not affected and she eventually outgrew the problem. (AR 538-  
6 539). She also stated that, outside of the relevant time period,  
7 she was able to maintain work as a bookkeeper even though she was  
8 experiencing the underarm growth problem. (AR 539, 541).

9 Dr. Hartman continued to treat Plaintiff from November 10,  
10 1999, to September 14, 2001 (AR 395-399) and from August 14, 2002,  
11 through January 9, 2004 (AR 498-505). On January 9, 2004, Dr.  
12 Hartman wrote a letter indicating that Plaintiff did not meet the  
13 disability requirements for diabetes, solely, but, based on Dr.  
14 Frank Rosekrans' psychological evaluation, he did not believe that  
15 Plaintiff could work successfully because of her multiple  
16 psychosocial problems. (AR 505). Dr. Hartman, however, made no  
17 vocational reference with regard to Plaintiff's previous right  
18 underarm infection on this occasion. (AR 505).

19 Dr. Rosekrans completed psychological evaluations of  
20 Plaintiff on August 5, 2002 (AR 428-430), and on December 2, 2002  
21 (AR 475-478). While Dr. Rosekrans diagnosed Plaintiff with a  
22 major depressive disorder, a dependent personality disorder and  
23 psychosocial and environmental problems and gave Plaintiff a  
24 Global Assessment of Functioning ("GAF") score of 45<sup>4</sup> on each  
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26 <sup>3</sup>Dr. Hartman thus concluded that Plaintiff's limitations would not  
27 meet the duration requirements of the Act (one year), instead finding that  
they were only expected to last a maximum of 26 weeks. 42 U.S.C. §  
1382c(a)(3)(A).

28 <sup>4</sup>A GAF of 50-41 reflects serious symptoms or serious impairment in  
social, occupational or school functioning. DIAGNOSTIC AND STATISTICAL MANUAL OF  
MENTAL DISORDERS-IV 32 (4th ed. 1994).

1 occasion (AR 430, 477), these evaluations took place well after  
2 the close of the date Plaintiff stipulated to in her requested  
3 closed period of disability. Moreover, as noted by the ALJ, at  
4 the first evaluation, Plaintiff reported she had never had  
5 problems with drugs or alcohol and, on most days, was able to  
6 carry out all activities of daily living, care for herself and her  
7 children, cook and clean the house, and do the shopping. (AR 278-  
8 279, 428-429). Dr. Rosekrans noted that Plaintiff reported to  
9 having completed computer school and to having done very well.  
10 (AR 279, 428). The mental status examination and Trails A and B  
11 were within normal limits. (AR 279, 429). The ALJ noted that, at  
12 the later evaluation, Plaintiff reported to using marijuana  
13 regularly at age 18 and indicated that she wanted to stay home and  
14 take care of her children. (AR 279, 475-476). It was noted that  
15 Plaintiff continued to be capable of caring for her personal needs  
16 and that she continued to be able to cook, clean and take care of  
17 herself and her children. (AR 279, 477). It was also noted that  
18 her mental status examination was again normal. (AR 279, 477).

19 All medical sources of record reporting during the period at  
20 issue, including Dr. Hartman, found that Plaintiff was no more  
21 limited than the ALJ determined in this case (light exertional  
22 activity). Dr. Hartman opined on October 6, 1994, that Plaintiff  
23 would be capable of performing light exertion work, but that her  
24 infected axillary node or gland would limit her ability to use her  
25 right arm. (AR 164-165). Dr. Hartman believed that the right arm  
26 infection would not restrict Plaintiff's ability to work for  
27 longer than 26 weeks (AR 165) and, in fact, Plaintiff testified  
28 that she was even able to perform full time work with the ailment  
(AR 539). Plaintiff's underarm infection did not meet the

1 duration requirements of the Act (42 U.S.C. § 1382c(a)(3)(A)),  
2 and, as indicated by Plaintiff, did not remain as an enduring  
3 impairment (AR 539). Although Dr. Hartman wrote on January 9,  
4 2004, that he did not believe that Plaintiff could work  
5 successfully given her multiple psychosocial problems (AR 505),  
6 this conclusion was based on a questionable mental status  
7 evaluation that was performed well after the expiration of the  
8 relevant time period in this case. In addition, Dr. Hartman's  
9 2004 letter expressed an opinion that is also well outside of the  
10 relevant time period and, significantly, failed to mention  
11 Plaintiff's previous underarm infections as vocationally relevant.  
12 (AR 505).

13 Based on the foregoing, the undersigned finds that it was not  
14 necessary for the ALJ to provide rationale to discount Dr.  
15 Hartman's opinions because Dr. Hartman's findings are in accord  
16 with the ALJ's RFC finding, and the substantial weight of the  
17 record evidence supports the ALJ's RFC determination. The  
18 evidence of record supports the ALJ's conclusion that Plaintiff  
19 was capable of performing light exertion work, with the additional  
20 limitations noted by the ALJ, during the relevant time period.  
21 (AR 282-283). Therefore, there is no error with regard to the  
22 ALJ's RFC determination in this case.

### 23 **B. Credibility**

24 Plaintiff also argues that the ALJ erroneously determined  
25 that Plaintiff was not credible. (Ct. Rec. 17, pp. 18-19). The  
26 Commissioner responds that the ALJ appropriately provided clear  
27 and convincing reasons to discredit Plaintiff. (Ct. Rec. 20, pp.  
28 8-9).

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1 It is the province of the ALJ to make credibility  
2 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
3 1995). However, the ALJ's findings must be supported by specific  
4 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
5 1990). Once the claimant produces medical evidence of an  
6 underlying impairment, the ALJ may not discredit his testimony as  
7 to the severity of an impairment because it is unsupported by  
8 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
9 1998) (citation omitted). Absent affirmative evidence of  
10 malingering, the ALJ's reasons for rejecting the claimant's  
11 testimony must be "clear and convincing." *Lester v. Chater*, 81  
12 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General findings are  
13 insufficient: rather the ALJ must identify what testimony is not  
14 credible and what evidence undermines the claimant's complaints."  
15 *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup>  
16 Cir. 1993).

17 The ALJ considered the evidence and testimony and determined  
18 that Plaintiff was not credible. (AR 282). In support of her  
19 finding in the regard, the ALJ indicated, throughout her decision,  
20 several reasons for discrediting Plaintiff's allegations.

21 The ALJ noted that medical records revealed that Plaintiff  
22 frequently missed doses of insulin, had very poor control over her  
23 condition, missed meals and was not taking insulin. (AR 277).  
24 The ALJ indicated that her diabetic condition had recently  
25 deteriorated, but that this was due to "missed meals and not  
26 taking insulin." (AR 281). The ALJ further noted that Plaintiff  
27 testified that she has never followed diabetic nutrition  
28 requirements because she is "stubborn." (AR 281). Noncompliance  
with medical care or unexplained or inadequately explained reasons



1 for failing to seek medical treatment cast doubt on a claimant's  
2 subjective complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v.*  
3 *Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989). The fact that Plaintiff  
4 failed to comply with the medical treatment prescribed by her  
5 physicians; namely, following the diabetic nutrition requirements  
6 and regularly taking insulin, discounts her claim of disabling  
7 limitations.

8 With regard to her daily activities, it is well-established  
9 that the nature of daily activities may be considered when  
10 evaluating credibility. *Fair*, 885 F.2d at 603. The ALJ indicated  
11 that Dr. Rosekrans' two reports revealed that Plaintiff was able  
12 to carry out all activities of daily living, care for herself and  
13 her children, cook and clean the house, and do the shopping. (AR  
14 278-279, 281, 428-429, 477). The ALJ also noted that Plaintiff  
15 attended computer training classes six hours a day and received  
16 good grades. (AR 280-281). Attending school is an activity which  
17 is inconsistent with an alleged inability to perform work.  
18 *Matthews v. Shalala*, 10 F.3d 678, 680 (9<sup>th</sup> Cir. 1993).

19 Plaintiff's reported ability to essentially perform all activities  
20 of daily living and to attend and do well at school also provide  
21 rationale for finding her not credible.

22 Inconsistencies in a disability claimant's testimony also  
23 support a decision by an ALJ that a claimant lacks credibility  
24 with respect to her claim of disabling pain. *Nyman v. Heckler*,  
25 779 F.2d 528, 531 (9<sup>th</sup> Cir. 1986). The ALJ noted that while  
26 Plaintiff testified to visual disturbance and related that she had  
27 diabetic retinopathy, an examination by a specialist in this field  
28 revealed "no evidence of early diabetic changes." (AR 280). The  
ALJ also indicated that Plaintiff testified that she did not drive

1 because of blurred vision; however, she related to Dr. Rosekrans  
2 that she did not drive because her driver's license had been lost.  
3 (AR 281). The ALJ also noted that Plaintiff's testimony of  
4 frequent severe insulin reactions was inconsistent with  
5 questionnaires she completed stating that she experienced mild  
6 insulin reactions as well as her statements to Dr. Hartman that  
7 she only had rare mild reactions. (AR 281). The ALJ indicated  
8 that Plaintiff's statements within the record regarding her drug  
9 use had also been inconsistent. (AR 281). As noted by the ALJ,  
10 Plaintiff reported to Dr. Rosekrans in August of 2002 that she  
11 never had a drug problem; however, she failed to advise him that,  
12 in April of 2002, she had been hospitalized for an overdose and  
13 laboratory testing revealed that she tested positive for  
14 marijuana, methamphetamines and phencyclidines. (AR 281).  
15 Additionally, when re-evaluated by Dr. Rosekrans, she again failed  
16 to advise him of that hospitalization and, although she did allude  
17 to drug use when she was young, the reporting was inconsistent  
18 with her testimony that she used drugs from 1990 through 1994 and  
19 again in 2000. These numerous inconsistencies support the ALJ's  
20 decision to discredit Plaintiff.

21 The undersigned also finds Plaintiff's statements to Dr.  
22 Rosekrans concerning her desire to stay at home and take care of  
23 her children, as opposed to working outside of the home,  
24 significant as to Plaintiff's credibility. (AR 279, 475-476).  
25 Also significant is that fact that Plaintiff admitted at the  
26 administrative hearing that she lied to her doctor about her  
27 symptoms in order to prevent possibly having her driver's license  
28 taken away. (AR 556).

///

1 The ALJ is responsible for reviewing the evidence and  
2 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
3 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). If evidence supports  
4 more than one rational interpretation, the court must uphold the  
5 decision of the ALJ. *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
6 Cir. 1984). It is the role of the trier of fact, not this Court,  
7 to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400.  
8 The Court thus has a limited role in determining whether the ALJ's  
9 decision is supported by substantial evidence and may not  
10 substitute its own judgment for that of the ALJ even if it might  
11 justifiably have reached a different result upon de novo review.  
12 42 U.S.C. § 405(g). After reviewing the record, the undersigned  
13 judicial officer finds that the ALJ provided specific, clear and  
14 convincing reasons supported by substantial evidence in the record  
15 for finding Plaintiff not credible. Accordingly, the undersigned  
16 finds that the ALJ did not err by concluding that Plaintiff was  
17 not credible and that her statements concerning her pain, her  
18 symptoms and her limitations were not persuasive. (AR 282).

19 **CONCLUSION**

20 Having reviewed the record and the ALJ's conclusions, this  
21 Court finds that the ALJ's decision is supported by substantial  
22 evidence and free of legal error. Based on the foregoing, the  
23 undersigned finds that the ALJ properly determined that Plaintiff  
24 is not disabled within the meaning of the Social Security Act.  
25 Accordingly,

26 **IT IS ORDERED:**

27 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec.**  
28 **16**) is **DENIED**.

///

3. The District Court Executive is directed to enter judgment in favor of Defendant, file this Order, provide a copy to counsel for Plaintiff and Defendant, and **CLOSE** this file.

**DATED** this 25<sup>th</sup> day of July, 2006.

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